



**COURT OF APPEALS OF INDIANA  
ORAL ARGUMENT AT A GLANCE  
BENTON CENTRAL JR.-SR. HIGH SCHOOL  
AUDITORIUM**



***William Riley v. State of Indiana***

**Appeal from:**

Lake County Superior Court,  
The Honorable  
Clarence D. Murray, Judge

**Oral Argument:**

Tuesday, October 27, 2009  
1:00 p.m.  
20 minutes each side

**CRIMINAL LAW ISSUE**

William Riley was convicted of two counts of dealing in cocaine, both Class A felonies, dealing in a look-alike substance, a Class D felony, and possession of cocaine, a Class D felony, and found to be an habitual offender; he was sentenced to sixty years. After Riley's convictions and sentence were affirmed on direct appeal, Riley filed a petition for post-conviction relief alleging his trial counsel was ineffective for failing to offer into evidence a taped conversation to discredit the confidential informant's testimony.

**Was Riley's trial counsel ineffective in violation of Riley's Sixth Amendment right to effective assistance of counsel?**

**CASE SYNOPSIS**

**Facts and Procedural History**

In 1994, Anthony Young was charged in Lake County with Class C felony possession of cocaine and with being an habitual offender. Young sought to work as a confidential informant. Young told the deputy prosecutor, Thomas Stefaniak, that Riley sold drugs. Young entered a plea agreement, agreeing to plead guilty to cocaine possession in exchange for the State's dismissal of the habitual offender allegation, with the further understanding that if Young became a confidential informant and contributed to a prosecutable case against Riley, both

charges would be dismissed.

Deputy Prosecutor Stefaniak placed Young under the direction of two Lake County officers, Anthony Stanley and Reginald Harris, to work with them as an informant. The Officers directed Young to contact Riley and let them know when Riley would be traveling to Lake County from Indianapolis. Officer Harris worked undercover and accompanied Young on three controlled buys, while Office Stanley watched the buys from a distance. On August 14, 1995, Young and Officer Harris made a purchase from Riley of a look-alike substance known as

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bogeyman. On August 29, 1995, Young and Officer Harris made a second purchase from Riley, which field-tested positive for cocaine. Finally, on September 1, 1995, Officer Harris alone made a purchase from Riley, which field-tested positive for cocaine.

On September 1, 1995, the State charged Riley with two counts of dealing in cocaine, both Class A felonies; dealing in a look-alike substance, a Class D felony; possession of cocaine, a Class D felony; and being an habitual offender. On September 3, 2005, Deputy Prosecutor Stefaniak called Young and tape-recorded their telephone conversation, which included the following exchange:

Young: "As far as for me coming down and testifying, I got the hell of a mouthpiece. Don't you know that Tom? If I'm going to convict these guys, they through. If I want to get away, give Ed the juice, I know the words to say up on the court Tom . . ."

Stefaniak: "Well you realize regardless of what happens you got to tell the truth. Right?"

Young: "I realize that, but there's a lot of ways you could talk on the stand, Tom. You know, just a matter of saying I can't recall, you know, and things like that. But, I'm just saying Tom, I was, trained by the, by the Feds. You know, that was who I first worked for. He trained me well, you know. So when it

comes to court, I have no problems. Ed is, Ed and Motown is through; with the tapes and you asking me the questions, if we got them, they through man. I'm not scared to come into court . . ."

Riley's jury trial was scheduled for Tuesday, February 20, 1996. In October 1995, Riley filed notice he would raise an entrapment defense at trial and also a motion to produce evidence, including all audio tapes. Four of the relevant tapes were not made available to Riley's counsel until February 13, 1996, one week before trial.

On February 16, 1996, Riley's counsel filed a motion for continuance based in part on the State's late tender of the tapes. Riley's counsel stated more time was needed to listen to and transcribe the audio tapes and that without a continuance, Riley would not receive effective assistance of counsel at trial. The trial court did not directly rule on the motion.

On February 20, 1996, the morning of trial, Riley's counsel again filed a motion for continuance, stating he had been "unable to listen to all of the tapes last week" and only over the weekend had become aware the State offered Young a complete dismissal of charges in exchange for testimony. Further, Riley's counsel stated additional time was needed to have the tapes enhanced so a jury could hear them. The trial court denied Riley's motion for continuance, and the jury trial proceeded that day.

At trial, Riley argued he was entrapped by Young acting as an agent of

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law enforcement. Young, who the State called as a witness, testified he had never been trained to testify or act as a confidential informant. Riley's counsel did not introduce into evidence the taped conversation in which Young told Deputy Prosecutor Stefaniak he had been trained "by the feds," bragged he was "the hell of a mouthpiece," and claimed to know "there's a lot of ways you could talk on the stand." Counsel did not ask Young if he had ever made such statements to Stefaniak.

However, Riley's counsel did cross-examine Young extensively. Counsel impeached Young with his deposition testimony that he had previously been trained by another agency as a confidential informant. Young also admitted he had testified previously as a cooperating witness. Further, Young admitted he "hated" what he believed was Riley's involvement in a friend's murder. Young conceded he would have done anything to help bring a case against Riley so his own charges would be dismissed. Riley's counsel also elicited testimony from Stefaniak (no longer a prosecutor) that he did not trust Young or any informant, as well as testimony from Officer Stanley that Young would have done anything to stay out of jail and that Young was unreliable and untruthful.

Riley was found guilty on all counts and determined to be an habitual offender. The trial court imposed a total sentence of sixty years in the Department of Correction. Riley appealed, and the Indiana Supreme Court affirmed his convictions and sentence. Riley v. State, 711 N.E.2d 489 (Ind. 1999). On February 10, 2009,

Riley's petition for post-conviction relief was denied. Riley now appeals.

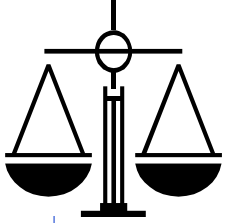
### Parties' Arguments

Riley argues his trial counsel rendered constitutionally ineffective assistance by failing to introduce into evidence the taped conversation between Young and the deputy prosecutor and by failing to question Young about that conversation. For trial counsel's assistance to be ineffective under the Sixth Amendment to the United States Constitution, the defendant must show that 1) counsel's performance fell below an objective standard of reasonableness based on professional norms, and 2) the defendant was prejudiced by counsel's substandard performance. To establish prejudice, the defendant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Riley argues, as to counsel's alleged deficiency, that counsel did not have an opportunity to listen to all of the audio tapes produced a week before trial, and therefore counsel was unable to adequately investigate Riley's defense or decide whether Young could be most effectively impeached through his taped conversation with the deputy prosecutor. As to prejudice, Riley argues counsel's failure to introduce the taped conversation or question Young about it deprived Riley of a crucial means of establishing Young's untruthfulness as a witness and his personal interest in testifying against Riley. Riley points to Young's central role in

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facilitating the drug transactions Riley was charged with, contending Young's credibility was crucial to the State's proof the transactions took place and Riley was not entrapped by Young.

The State argues Riley has not met his burden of establishing either the deficiency or prejudice elements of his ineffective assistance of counsel claim. As to counsel's performance, the State argues the record supports an inference Riley's counsel listened to all the tapes before trial and made a strategic decision not to introduce the taped conversation into evidence or question Young about it. Rather, counsel chose other means of attacking Young's credibility and, to attack the State's credibility, drew the jury's attention to the fact the tapes were produced only a week before trial. As to prejudice, the State argues the jury knew, based on other evidence, that Young was not a truthful person and had a personal interest in testifying against Riley. If the taped conversation had been introduced, Riley would have been convicted anyway, the State argues, because the proof Riley engaged in the charged drug transactions and was not entrapped in doing so was established by the officers' testimony, independently of Young's credibility or lack thereof.

### Glossary:

**Post-conviction relief** proceedings are separate from the direct appeal process; they allow for challenging a criminal conviction or sentence on specific grounds after direct appeals have been denied. A defendant petitioning for post-conviction relief must establish grounds for relief by a preponderance of the evidence.

The **entrapment defense** is a defense that may be raised at trial and has two elements: 1) the defendant's unlawful conduct was induced by a law enforcement officer or an agent of law enforcement by persuasion or other means likely to cause the defendant to commit the offense, and 2) the defendant was not predisposed to commit the offense.

A **motion for continuance** is a motion to reschedule the trial for a later date.

To **impeach** is to attack the credibility of a witness who testifies at trial. Proper methods of impeachment include confronting the witness with a prior inconsistent statement made during a deposition.

A **deposition** is sworn testimony given before trial.

## TODAY'S PANEL OF JUDGES

### Hon. Patricia A. Riley (Jasper County) Presiding

- Judge of the Court of Appeals since January 1994

**Patricia A. Riley** was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor at the Indiana University School of Law-Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession

Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges. Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and 2006.

### **"Appeals on Wheels"**

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began statewide just prior to the Court's centennial in 2001.

The Court of Appeals has held over 250 "on the road" cases since early 2000.

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses.



## **TODAY'S PANEL OF JUDGES**

### **Hon. Margret G. Robb (Tippecanoe County)**

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe

County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U.S.N.A., recently returned from his second deployment.

## TODAY'S PANEL OF JUDGES

### Hon. Paul D. Mathias (Allen County)

- Judge of the Court of Appeals since March 2000

**Paul D. Mathias** was appointed to the Indiana Court of Appeals for the Third District in March 2000. Prior to his appointment, he served as a judge of the Allen Superior Court – Civil Division in Fort Wayne for eleven years and before that as the referee of its Small Claims Division for four years.

Judge Mathias was born in LaGrange, Indiana, and grew up in the Fort Wayne area. He graduated with honors from Harvard University in 1976 and from the Indiana University School of Law in Bloomington in 1979, where he was a member of the moot court team. Until his appointment as small claims court referee he practiced law for six years in a medium-sized Fort Wayne law firm, concentrating in construction law, personal injury, domestic relations, and appellate practice.

Like all judges on the Court of Appeals, Judge Mathias writes over 150 opinions each year and votes on more than 300 opinions written by his fellow judges. Off the bench, he also maintains a keen interest in civic education. Judge Mathias is especially proud of his deep and long-standing commitments to the *We The People* program, which is the

civics education program sponsored by the Indiana Bar Foundation, Indiana State Bar Association, and the Indiana Judges Association, and to the Indiana Judges Association itself, which he has served as President and for which he continues to serve as a legislative liaison to the General Assembly. He is also an active member of national, state and local bar associations.

Judge Mathias has been honored to receive the Centennial Service Award from the Indiana State Bar Association, “[i]n recognition of the Indiana bar and judiciary, living and deceased, who have provided outstanding leadership and service to the public and the profession,” and a Sagamore of the Wabash award from Governors O’Bannon and Kernan.

Judge Mathias and his wife, Carlabeth, have been married thirty-three years and are the proud parents of two sons, Ethan and Corbin. Carlabeth is a child and family counselor in Hamilton County. They enjoy travel, music, theater, and doing just about anything together as a family.

## **ATTORNEYS FOR THE PARTIES**

### **For Appellant, William Riley:**

Benjamin W. Murphy  
Murphy Yoder Law Firm, P.C.  
Merrillville



Benjamin W. Murphy was born in Gary, Indiana. He attended Indiana University where he received his B.S. in Business Economic and Public Policy in 1995. Benjamin then graduated from Valparaiso University Law School in 1998. In the same year, he was admitted into the Indiana State Courts, the Illinois State Courts, the United States District Court of Northern Indiana, the United States District Court of Northern Illinois, and the United States

Court of Appeals for the 7<sup>th</sup> Circuit.

Benjamin is a member of the American Bar Association, the Indiana Bar Association, and the Lake County Bar Association. He is also a member of the National Association of Criminal Defense Lawyers. His primary area of litigation includes criminal defense and personal injury.

### **For Appellee, State of Indiana:**

Scott L. Barnhart  
Attorney General's Office  
Indianapolis

Scott was born in Evansville, Indiana, and grew up in nearby Newburgh, Indiana. He attended Indiana University, Bloomington where he received his B.S. in Management and Operations Management from the Kelley School of Business. Upon graduation, Scott returned to Evansville and spent a year serving as an Americorps Volunteer and primarily worked with residents of the local housing authority. He then attended the University of Toledo College of Law and graduated with honors.

Scott currently serves as a Deputy Attorney General for Indiana Attorney

General Greg Zoeller. He is primarily responsible for representing the State of Indiana in criminal appeals before the Court of Appeals and the Indiana Supreme Court.

Scott has also worked as a Deputy Prosecutor for the Marion County Prosecutor's Office. He was directly responsible for the management and disposition of hundreds of criminal cases and tried five jury trials. In his free time, he enjoys traveling, playing golf, and volunteering for civic and law-related education programs.